

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-112762-08  
Date: June 24, 2008

### Legend

X =

Shareholders =

=

State =

D1 =

Dear :

This letter responds to a letter dated February 19, 2008, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### Facts

The information submitted states that X was incorporated in State on D1. Shareholders intended for X to be an S corporation effective D1. However, due to inadvertence, Form 2553, Election by a Small Business Corporation, was not timely

filed for X. Accordingly, X requests a ruling that it may elect to be treated as an S corporation effective D1.

### Law & Analysis

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) such election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then such election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

### Conclusion

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective D1. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D1 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning D1. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/s/

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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